

## **2005 DRAFTING REQUEST**

### **Bill**

Received: **10/29/2004**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Carol Owens (608) 267-7990**

By/Representing: **Jaque Dicks**

This file may be shown to any legislator: **NO**

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Dom. Rel. - cust./plac./vis.**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Owens@legis.state.wi.us**

Carbon copy (CC:) to:

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### **Pre Topic:**

No specific pre topic given

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### **Topic:**

Permitting court to order custody or physical placement on basis of future contingency

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### **Instructions:**

See Attached

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### **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 11/01/2004	lkunkel 11/16/2004					
/1			jfrantze 11/17/2004		mbarman 11/17/2004	lemery 04/07/2005	

FE Sent For:

<END>

→ Not Needed

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/?	pkahler	1/1mk 11/16	Jo 11/16	Jo 11/17			

FE Sent For:

<END>

## Kahler, Pam

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**From:** Dicks, Jacque  
**Sent:** Friday, October 29, 2004 12:35 PM  
**To:** Kahler, Pam  
**Subject:** Drafting Request for Representative Owens

Pam,

Here is a list of proposals that Representative Owens would like to introduce for the 2005-06 legislative session:

- Re-drafts from 2003-04 session:

1) AB 867, relating to permit court to make custody or physical placement orders on basis of future contingency.

- New draft:

1) Rep. Owens was contacted by an individual who was wondering if the following language would work in the state statutes:

The court shall grant a stay in a pending divorce for a period of \_\_\_\_\_ (days) when a designated representative of a \_\_\_\_\_ church files a Petition of Intervention in order to attempt reconciliation of the two parties and/or to educate the parties on \_\_\_\_\_ the effects of divorce on children. The designated representative of the Church shall file a report with the court within \_\_\_\_\_ (days) informing the court whether both parties cooperated in the reconciliation and education efforts and \_\_\_\_\_ whether the divorce should be dismissed or the case should be remanded to the court. The church can request a stay \_\_\_\_\_ for an additional period of \_\_\_\_\_ days.

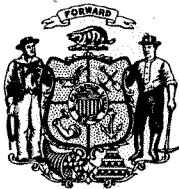
The person who had contacted us was informed by an attorney that the church/state consitutional divide might prohibit this kind \_\_\_\_\_ of law, but asked that we still inquire from our drafting attorneys.

Thank you for your assistance to this request. If you have any questions, please feel free to either call or email me.

*Jacque Dicks*

Research Assistant  
Office of Rep. Carol Owens  
315 North, State Capitol; P.O. Box 8953  
Madison, WI 53708  
Phone # (608) 267-7990 or 1-888-534-0053  
Jacque.Dicks@legis.state.wi.us

767.082  
767.083  
120 days  
767.115



State of Wisconsin  
2003-2004 LEGISLATURE  
2005-2006

0621/1  
LRB-3764/1

PJK:kmg:jf

ImK

2005  
2003 ASSEMBLY BILL 867

February 19, 2004 - Introduced by Representatives OWENS, ALBERS, BIES, HAHN, HINES, JESKEWITZ, KRAWCZYK, MCCORMICK, MUSSER and J. WOOD. Referred to Committee on Family Law.

LPS:PLSPWF

ReGen

- 1 AN ACT *to amend* 767.325 (intro.); and *to create* 767.24 (5m) of the statutes;  
2 **relating to:** ordering modifications to legal custody or periods of physical  
3 placement contingent upon the occurrence of a specified future event or a  
4 specified change in conditions. ✓

***Analysis by the Legislative Reference Bureau***

When ordering joint or sole legal custody of and periods of physical placement with a minor child in an annulment, divorce, legal separation, or paternity action, the court is required, under current law, to consider a number of factors, such as the amount and quality of time that each party has spent with the child in the past, the mental and physical health of the parties and the child, the child's adjustment to the home, school, and community, and the child's age; and developmental and educational needs. Within the two-year period after an initial custody or physical placement order is entered, the order may not be modified unless the court finds that the modification is necessary because the current custodial conditions are physically or emotionally harmful to the child. After two years after the initial order is entered, the court may modify legal custody or physical placement if the court finds that there has been a substantial change in circumstances since the last order was entered and that the modification is in the child's best interest. ✓

According to the case law, a court's authority in actions affecting the family is based entirely on the statutes, which with respect to determining legal custody and physical placement "embody a sense of contemporaneity..." *In re Marriage of Koeller v. Koeller*, 195 Wis. 2d 660, 666 (1995). Therefore, the court lacks the authority to

the child's

**ASSEMBLY BILL 867**

include in a custody or physical placement order a prospective modification of custody or physical placement that is contingent upon the occurrence of a future event or a change in current conditions. ✓

This bill explicitly authorizes a court, when determining legal custody or physical placement, to take into account events that are likely to occur in the future or temporary current conditions that affect a party's ability to perform parental duties or to care for the child. In a legal custody or physical placement order, the court may provide for future modifications to, or retain the option to modify at a future time, legal custody or physical placement upon the occurrence of a specified future event or a specified change in current conditions. ✓ The statutes that apply to modifications of custody and physical placement orders before and after two years after an original order is entered do not apply to these contingent modifications that are included in an order. ✓

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 767.24 (5m) of the statutes is created to read:

2           767.24 (5m) MODIFICATION CONTINGENT UPON FUTURE EVENT OR CHANGE IN  
3           CONDITIONS. (a) In making an order of legal custody under sub. (2) or (3) or periods  
4           of physical placement under sub. (4), the court may take into account events that are  
5           likely to occur in the future or temporary current conditions that affect the ability  
6           of one or both parties to make decisions in the best interest of the child or to perform  
7           parental duties and responsibilities or care for the child and may provide for future  
8           modifications to, or retain the option to modify at a future time, legal custody, the  
9           authority to make major or other specified decisions, or periods of physical  
10          placement, contingent upon the occurrence of a specified future event or a specified  
11          change in temporary current conditions, any of the following:

12          (b) Modifications to legal custody or periods of physical placement under this  
13          subsection are not subject to s. 767.325.

14          **SECTION 2.** 767.325 (intro.) of the statutes is amended to read:

**ASSEMBLY BILL 867****767.325 Revision of legal custody and physical placement orders.**


(intro.) Except for matters under s. 767.327 or 767.329, and except as provided in  
s. 767.24 (5m) (b), the following provisions are applicable to modifications of legal  
custody and physical placement orders:

**SECTION 3. Initial applicability.**




(1) This act first applies to actions or proceedings, including actions or  
proceedings to modify a judgment or order previously granted, that are commenced  
on the effective date of this subsection.

**(END)**

**2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0621/?ins  
PJK: 

**INSERT 2-11**

- 1  1. Legal custody.
- 2  2. Periods of physical placement.
- 3  3. The authority to make major or other specified decisions.

**(END OF INSERT 2-11)**

  
4



## Emery, Lynn

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**From:** Dicks, Jacque  
**Sent:** Thursday, April 07, 2005 11:51 AM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 05-0621/1 Topic: Permitting court to order custody or physical placement on basis of future contingency

It has been requested by <Dicks, Jacque> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-0621/1 Topic: Permitting court to order custody or physical placement on basis of future contingency